HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2((b)

Description of the Case.

Criminal Appeal no. 745 of 2001
(old no. 766 of 1991)

Dinesh Chandra Oli----------Appellant
Vs.
State of U.P.----------Opp. Party.

Approved for reporting.

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Not approved for reporting

Date of Decision 24th August 2004.

Initial of Judge.

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HIGH COURT OF UTTARANCHAL AT NAINITAL.

Reserved

Criminal Appeal No. 745 of 2001
(Old no.766 of 1991)

Dinesh Chandra Oli S/o Sri Padma Dutt Oli,
R/o Prem Niwas Mina Bazar, Gudaoli,
P.S. Askot,
District Pithoragarh. ….Appellant.

Vs.

State of U.P.. …Opp. Party.

Sri D.V. Sharma, learned Senior Counsel assisted by
Sri B.S. Parihar, Adv. for the appellant,
Sri N.C. Gupta, learned counsel for the complainant,
Sri G.S. Sandhu, learned addl. G.A. for the State.

Coram:-Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

Dated: Nainital August 24, 2004

(Delivered by Hon. B.C. Kandpal, J.)

This criminal appeal arises out against the judgment and order dated 16.04.1991 passed by the Sessions Judge, Pithoragah in Sessions Trial no. 26 of 1990 State vs. Dinesh Chandra Oli and another u/s 302 I.P.C.

The brief facts of the prosecution case, giving rise to the appeal, are that the accused/appellant Dinesh Chandra Oli (hereinafter called as appellant) a contractor alongwith another accused Anand Ballabh Pande (a contractor) had some heated altercations with Pratap Singh on 14.09.1988 at about 8.30 P.m. The same enraged Pratap Singh and he slapped the appellant Dinesh Chandra. The appellant alongwith Anand Ballabh Pande left the betel shop belonging to one Trilok Singh and went to the house of Anand Ballabh Pande who was the tenant on the first floor of the betel shop, belonging to Trilok Singh. Pratap Singh chased Anand Ballabh and the appellant to that room in a fervid mood and after entering inside the room, as

per the prosecution case, Dinesh Chandra-appellant and another accused Anand Ballabh Pande caused murderous assault on the person of Pratap Singh. At the time of the assault, Dinesh Chandra was having bedpost and another accused Anand Ballabh Pande was also having an iron rod in their hands and both of them, with their respective weapons, caused injuries on the person of Pratap Singh

Pratap Singh, after sustaining the injuries fell on the floor of the room and he had been lying injured in the same room till next morning.

In the morning of 15.09.1988, one Suresh Chandra Tewari informed Maha Singh, brother of the deceased, with regard to this fact that Pratap Singh was lying injured in the room belonging to Anand Ballabh Pande. Maha Singh reached the place of occurrence and saw Pratap Singh was lying in an injured condition over there. Maha Singh thereafter, rushed to his village and informed abut the condition of Pratap Singh to his brother Karam Singh who also went at the spot. Karam Singh thereafter, informed Smt. Saraswati W/o Pratap Singh who also reached at the place of occurrence.

All of the aforesaid persons thereafter, took Pratap Singh-injured to the Primary Health Centre, Barakot. The injured was thereafter take to Primary Heath Centre, Lohaghat where he was medically examined by the doctor. The doctor again referred the injured Pratap Singh to District Hospital, Pithoragarh as his condition was found precarious at that time. Pratap Singh was admitted in the Civil Hospital, Pithoragarh on 15.09.1988 at about 8:30 p.m. and ultimately died in the same hospital on 17.09.1988 at 3:20 p.m.

In the night of 15.09.1988 at 8:30 p.m. a memo was received at police station Kotwali, Pithoragarh which was allegedly sent from District Hospital, Pithoragarh to the effect

that injured Pratap Singh had been referred from Primary Health Centre, Lohaghat and admitted in the hospital in injured condition. This entry of the memo was made in the G.D. no. 42 at 20:30 hrs. on 15.09.1988 P.S. Kotwali (Ext. A-5). Again, after the death of Pratap Singh on 17.09.1988 on 3:20 p.m. an information was sent by District Hospital, Pithoragarh to police station, Pithoragarh by means of a memo (Ext. A-8) and the entry was made in G.D. no. 29 on 17.09.1988 at 16:05 hrs.

The first information report of the aforesaid occurrence was lodged by Karam Singh-P.W.7 (brother of the deceased Pratap Singh) on 16.09.1988 at about 9:10 a.m. stating therein that Pratap Singh was assaulted by Dinesh Chandra and another accused Anand Ballabh Pande on 14.09.1988 at 11:00 p.m.

It is relevant to mention here that when Pratap Singh-injured was taken to Primary Health Centre, Lohaghat on 15.09.1988, he was medically examined by the doctor. The doctor found that Pratap Singh was unconscious at the time of his medical examination and observed following injuries on his person:-

1. 4cm. x 0.5 cm. x 0.5 cm. lacerated wound on the head 4 cm. left side of the mid line and 9cm. above the tragus of left side on left ear.
2. 1.5cm. x 4cm. x 0.5cm. lacerated wound on the head (occipital region) in the mid line 6cm. back to the injury no. (1).

The doctor also opined that the injuries were about one day old and also suggested that injuries to be kept under observation as well as suggested X-Ray of the skull.

After the death of Pratap Singh autopsy, on his body was conducted on 18.09.1988 at 11:30 a.m. by doctor V.C. Tripathi (P.W.1) at Pithoragarh who found following ante-mortem injuries on his person.

1. Stitched wound. After removing the stitches, lacerated wound size 3cm. x 1cm. x bone deep over occipital region of the head.
2. Stitched would. After removing the stitches, wound is lacerated size 4cm. x 1cm. bone deep over vault of skull, on left side obliquely placed over parietal region.
3. Heamotoma swelling size 6cm. x 4cm. over left temporal region.
4. Abrasion size 2cm. x 1cm. over vault of skull near injury no.2.
5. Abraded contusion of size 3cm. x 1cm. over upper part of thigh on lateral aspect.

The doctor opined that the death was caused due to coma as a result of shock and haemorrhage on account of injuries.

As the first information report was lodged by Karam Singh at police station Kotwali, Pithoragarh but keeping in view that the matter related to police station Lohaghat, the investigation of the case was transferred to P.S. Lohaghat and the Police of P.S. Lohaghat, after completion of investigation, submitted the charge sheet against the appellant as well as another accused Anand Ballabh Pande.

After the submission of the charge sheet, the learned C.J.M., Pithoragarh committed the appellant and another accused Anand Ballabh Pande to the Court of Sessions, vide order dated 05.09.19900.

The learned Sessions Judge framed charge against the appellant Dinesal Chandra as well as another co-accused Anand Ballabh Pande u/s 302/34 I.P.C. The accused persons denied of the charge leveled against them and claimed their trial.

The prosecution, in order to support its case, produced P.W.1 Dr. V.C. Tripathi, P.W.2 Head Constable Afsar Khan, P.W.3 Dan Singh, P.W.4 Trilok Singh (eye witness), P.W.5 Smt. Saraswati (wife of the deceased), P.W.6 Suresh Chandra Tewari, P.W.7 Karam Singh (informant), P.W.8 Maha Singh,

P.W.9 S.I. Bhupal Singh Manral and P.W.10 S.I. J.P. Naithani (I.O.).

After the evidence of the prosecution was over, the statements of the appellant as well as another accused were recorded u/s 313 Cr.P.C. the accused persons did not adduce any evidence in their defence.

Learned Trial Court, after having perused the evidence on record and hearing to learned counsel for the parties was pleased to acquit the co-accused Anand Ballabh Pande of the charge leveled against him. The learned court below, at the same time, convicted Dinesh Chandra Oli (appellant), u/s 302 I.P.C. and sentenced him to life imprisonment, vide judgment and order dated 16.04.1991.

Feeling aggrieved by the aforesaid impugned judgment and order, the convict Dinesh Chandra Oli preferred appeal before the Allahabad High Court, which has been transferred to this Court for disposal, after the certain of State of Uttaranchal.

We have heard learned counsel for the parties and perused the evidence on record.

Learned counsel for the appellant first of all argued in the instant case that the first information report lodged by the complainant Karam Singh (P.W.7) pertaining to the incident in question is highly belated. He has invited our attention towards this aspect of the matter that the incident took place on 14.09.1988 at 11:00 p.m. and the first information report could be lodged by Karam Singh at P.S. Pithoragarh on 16.09.1988 at 9:10 a.m. while the complainant had ample opportunity to lodge the first information report on 15.09.1988 either at Lohaghat or latest by the night of 15.09.1988 at Pithoragarh, where the deceased Pratap Singh was admitted at 8:30 p.m. on 15.09.1988.

Learned counsel for the prosecution has submitted that the delay in lodging the first information report cannot, by itself, be a ground to doubt the prosecution case. He has cited 1991 (28) A.C.C. page 93 (Supreme Court) Tara Singh Vs. State of Punjab.

It is true that mere delay in lodging the first information report, by itself, cannot be a ground to doubt the prosecution case. Therefore, in order to reach to a definite conclusion with regard to the truthfulness of the prosecution case, we will have to assess the other evidence available on record.

In case, other evidence available on record are found to be trustworthy then certainly the delay in lodging the first information report will not play an important role but if it appears to us that there are indications of fabrication, then the delay in lodging the first information would certainly be an important factor to doubt the prosecution case.

The evidence on record shows that in the morning of 15.09.1988, complainant came to know about the actual incident as has been alleged by the complainant Karam Singh (P.W.7). His evidence before the court below shows that he received the information on 15.09.1988 at 7:00 a.m. through Maha Singh and Maha Singh was informed about the injured condition of the Pratap Singh through Suresh Chandra Tewari. This witness has further deposed that when be went to the room of Anand Ballabh Pande, he saw that his brother was lying on the floor and there was injury on his head; blood was oozing out and the accused were not present inside the room. This witness has further stated that he called Pratap Singh loudly then Pratap Singh told him that he was assaulted by Dinesh Chandra Oli and Anand Ballabh with Lathi and brick. This witness, thereafter went to the house of Paratap Singh and took his wife Smt. Saraswati. Thereafter, Pratap Singh was taken to Barokot

and from there to Lohaghat P.H.C. and from Lohaghat P.H.C., Pratap Singh was referred for District Hospital, Pithoragarh. Hence he was admitted in District Hospital at Pithoragarh on 15.09.1988 at 8:30 P.m. This witness has stated that on next day i.e. 16.09.1988 at 9:10 a.m., the report could be lodged by him, as he dictated the report to someone in order to lodge the same at police station.

P.W.8 Maha Singh has also stated in his deposition that on 15.09.1988 at about 6:00-6:30 a.m. Suresh Chandra Tewari came to him and informed that Pratap Singh was lying in a precarious condition to the room of Anand Ballabh Pande. He, thereafter called Karam Singh and went to the room of Anand Ballabh Pande where they saw that Pratap Singh was lying in an injured condition. He further has deposed that Pratap Singh told them as to Dinesh and Anand Ballabh Pande had caused injuries on his person. Thereafter they called the wife of Pratap Singh and took him to Barakot Hospital from there to Lohaghat Primary Health Centre thereafter they had taken Pratap Singh to Civil Hospital, Pithoragarh on 15.09.1988 at 8.30 p.m.

It is worthy to mention here that deposition of Karam Singh (P.W.7) reveals that he had stated before the Trial Court that there is police station at Lohaghat, on the way which leads to hospital. He has also stated that there is a Police Check Post at a distance of about 50 to 60 paces but he did no lodge any report at P.S. Lohaghat. This witness has further deposed that it takes 5 minutes to reach to Kotwali police station from Civil Hospital Pithoragarh.

Further deposition of Maha Singh (P.W.8) reveals that a Patwari is posted at Barakot but he did not ask Karam Singh to lodge the report over there because the Patwari does not have jurisdiction pertaining to Barakot. This witness has further deposed that he did not ask Karam Singh to lodge the report at

Lohaghat because every body was busy in the treatment of Pratap Singh. He has further deposed that there is a distance of about 200 meters between Lohaghat hospital and police station. This witness has further deposed that after reaching Pithoragarh Civil Hospital they admitted Pratap Singh over there. He has further deposed that after admission of Pratap Singh, they had no work but they kept themselves sitting by the side of Pratap Singh. He has further deposed that he din not ask Karam Singh to lodge the report at P.S. Pithoragarh. He has further deposed that the distance between Civil Hospital Pithoragarh and the police station must be approximately 250-300 meters.

Keeping in view the deposition of these two witnesses, it becomes quite clear that the complainant Karam Singh and the another witness Maha Singh, who is also family member of deceased Pratap Singh, had ample opportunity to lodge the first information report either at police station Lohaghat or at police station Pithoragarh on 15.09.1988 but for the reason best known to these witnesses, the first information report could not be lodge on 15.09.1988.

It is not the case where only complainant Karam Singh was busy in the treatement of Pratap Singh. In fact, Karam Singh was having the company of certain other family members; therefore, any member of the family could have gone to the police station concerned in order to lodge the first information report. Trilok Singh (P.W.4) has deposed in his evidence before the Trial Court that Bhuwan Chandra took Pratap Singh on his shoulder for Barakot Hospital and Maha Singh, Karam Singh, Trilok Singh (brother of the deceased Pratap Singh) and Smt. Saraswati had also gone with the victim to hospital. Therefore, if so many family members of deceased Pratap Singh had gone to the hospital then certainly one of the members in the family

could have spared few moments to lodge the first information at the concerned police station specially under the circumstances that the police station either at Lohaghat or at Pithoragarh are at a very short distance from the hospitals.

The delay in lodging the first information report, in the instant case, further goes to show that it was quite probable that the complainant and other witnesses, in fact, had no knowledge with regard to the actual assailants as well as the manner of incident. This conclusion finds strength by the evidence of Karam Singh and the other relevant papers available on the record. Karam Singh (P.W.7), in his deposition, has clearly stated that the names of the accused persons were disclosed to him and Maha Singh by the deceased. Maha Singh (P.W.8) also deposed the same thing in his evidence. But on having perused paper no. 25-A., it clearly reveals that a memo received at police station Kotwali Pithoragarh on 15.09.1988 at 8:30 p.m. which was sent from the District Hospital showing that injured Pratap Singh referred from Primary Health Centre, Lohaghat was admitted in Civil Hospital, Pithoragarh in an injured condition. It was entered in the G.D. at serial no. 42 20-30 hrs. on 15.09.1988 and it clearly reveals that the District Hsopital had informed the police station Kotwali, Pithoragarh that it was a case of accident and the police of P.S. Kotwali made an endorsement in the G.D. that "UKTA MEMO KE MAZMOON SE KISI JURM KA HONA GYAT NANHEEN HOTA HAI".

It is, thus, quite clear that upto 8:30 p.m. on 15.09.1988, the names of the accused/appellant were not known either to the complainant or to any other family members of the deceased Pratap Singh.

In this connection, the deposition of Smt. Saraswati (P.W.5) who is wife of deceased Pratap Singh is also relevant, as she has deposed that her husband was lying unconscious when

she saw him for the first time in the room of Anand Ballabh Pande. She also deposed that first of all, Pratap Singh was taken to Barakot Hospital and then on 15.09.1988 at 2:00 P.m. he was taken to Primarily Health Centre, Lohaghat and upto that time it was not in her knowledge as to who were the actual assailant.

Further, if the deposition of Dr. V.S. Tripathi (P.W.1) is perused then the same reveals that the doctor has deposed that the injured would have been unconscious after sustaining the head injury and he would be unconscious till his death.

It is, therefore, quite clear that, in view of the testimony of Smt. Saraswati W/o deceased Pratap Singh as well as the deposition of doctor, injured Pratap Singh must be unconscious when he was lying in the room of Anand Ballabh Pande and was seen by the informant Karam Singh, Maha Singh another witness as well as Smt. Saraswati W/o Pratap Singh. Hence, there could not be any reason that Pratap Singh might have disclosed the names of the real assailants to either the complainant or to another witness Maha Singh. This is the reason that the first information report could not be lodged at police station by the compliant promptly. The delay, thus, in lodging the first information report at police station concerned, appears to be highly suspicious and appears to have been lodged after deliberations.

Hon'ble the Supreme Court in a case reported in AIR 1988 (SC), page 1158 Awadhesh and another vs. State of Madhya Pradesh, has clearly observed that when the police station is only two furlongs away then the delay in lodging the first information report becomes highly suspicious.

The facts and circumstances of the case cited above are fully applicable in the instant case. As we have observed that the complainant had sufficient opportunity to lodge the first information report at the police station concerned but it reveals

from the perusal of the evidence that the names of the real assailants were not known to him, therefore, this report could be lodged after inordinate delay and with deliberations, and false implications of the appellant in the present case, under these circumstances cannot be ruled out.

Another important point in this regard, is to be considered, as to whether the names of the real assailants came into light to the complainant as well as the other persons in the morning of 15.09.1988 and whether Trilok Singh (P.W.4) actually disclosed the name of the real assailants to Karam Singh and Maha Singh. It is also to be assessed as to whether Trilok Singh had an opportunity to see the real incident or not.

The evidence of Karam Singh (P.W.7) and Maha Singh (P.W.8) available on the record show that the names of the real assailants were disclosed by the deceased to them when they saw Pratap Singh in an injured condition at the place of the occurrence. But this evidence is totally discredited by the perusal of paper no. 25-A, which is the G.D. entry of P.S. Kotwali, Pithoragarh in this regard.

Further, evidence of Trilok Singh (P.W.4) shows that he has betel shop in Barakot and the accused Anand Ballabh Pande used to reside in the room situate on the first floor of the shop. This witness has deposed that on 14.09.1988 at about 8:30 p.m., the appellant Dinesh Chandra and Ratibhan came to his shop to take betel. Deceased Pratap Singh also came over there to take betel. There were some heated altercations between appellant Dinesh Chandra and Pratap Singh. Pratap Singh, on being enraged, slapped Dinesh Chandra-appellant; this witness (P.W.4) intervened and thereafter, everybody had gone to their sides. This witness has further deposed that Ratibhan and Anand Ballabh Pande took appellant Dinesh Chandra to the room of Anand Ballabh Pande but subsequently Pratap Singh

also went to the room of Anand Ballabh Pande and there again heated altercations started. This witness has further deposed that he, alongwith Ratibhan and Pooran Chandra Joshi were standing in front of that room and saw that Dinesh Chandra Oli (appellant) assaulted with bedpost on the head of Pratap Singh due to which Pratap Singh fell down and thereafter this witness came to his shop.

This witness has disclosed the time of the occurrence as 8:30 p.m., while the first information report shows that the incident of assault had taken place at about 11:00 p.m. in the room of Anand Ballabh Pande. Further, Trilok singh in his deposition has stated that he had already disclosed this fact to Maha Singh with regard to the actual incident but the deposition of Maha Singh does not reveal anywhere that when he went to Pratap Singh in the room of Anand Ballabh Pande, then Trilok Singh told him with regard to the actual incident in question. The evidence of Trilok Singh (P.W.4) further reveals that he deposed that, as he did not want to involve himself in this matter hence, he did not inform anyone in the night pertaining to the actual occurrence. This conduct of Trilok Singh appears to be improbable. This witness is the real uncle of deceased Pratap Singh and it does not appeal to reason that after witnessing the actual incident, this witness had not either gone to rescue Pratap Singh or provide any medical aid to him throughout the night or intimate any of the close family members about the incident immediately after the occurrence.

It is also pertinent to mention here that this witness has disclosed the alleged incident to the investigating officer after about more than one and half month. The incident is alleged to have taken place in the night of 14.09.1988, while this witness has stated before the third investigating officer on 08.11.1988 that he actually witnessed the incident. It is worthy to mention

here that the first investigating officer took his statement on 17.09.1988 and he stated before the first investigating officer that "FIR SABHI KAMRE KE ANDAR CHALE GAYE, USKE BAD HAM DUKAN BAND KARKE GAON CHALE GAYE"

It is, therefore, quite clear that this eye witness remained silent for a long time and did not disclose about the actual incident to anyone. The prosecution has not come forward as to why this witness kept silence for such a long time and ultimately narrated the truth to the investigating officer. The evidence of Trilok Singh (P.W.4) also does not convey any credence in view of his shaky conduct. It is not clear as to how, why and under what circumstances the good sense prevail upon him and he ultimately thought of disclosing the truth to the investigating officer and that too after about 50 days.

It is noteworthy to point out here that wife of the deceased Pratap Singh also came to the place of the occurrence on 15.09.1988 at 7:00 a.m. She saw her husband lying in the room of Anand Ballabh Pande in an unconscious state. She has deposed before the Court that her husband was lying unconscious and she could not know the names of the actual assailants on that day.

S.I. J.P. Naithani (P.W.10) is the third investigating officer. He has deposed in his cross examination that statement of Trilok Singh was recorded by the previous investigating officer and Trilok Singh also verified the statement. Under these circumstances, it does not appeal to reason as to what was the occasion with the third investigating officer to record the statement of Trilok Singh when his statements u/s 161 of the Code of Criminal Procedure had already been recorded by the first investigating officer on 17.09.1988. In our view, the statement of Trilok Singh (P.W.4) was recorded by the third investigating officer on 08.11.1988 merely in order to fill up the

lacunae in the prosecution case. It might have appeared to the prosecution that it was not a case of any positive evidence, therefore, in order to create the evidence in this particular case, the statement of Trilok Singh was recorded by the investigating officer on 08.11.1988 for the second time. We have also observed above that in view of the deposition of doctor as well as evidence of Smt. Saraswati (P.W.5), it is quite clear that Pratap Singh was unconscious in the morning of 15.09.1988 and there can't be any imagination that Pratap Singh might have told the names of the actual culprits at that time, hence under these circumstances, the names of the actual culprits were not known to any of the witnesses on 15.09.1988 with the result, it appears to us that none of the witnesses had an occasion to see the actual occurrence and the assailants i.e. the appellant as well as the other co-accused, were brought to book afterwards.

The learned counsel for the State has put his emphasis on the dying declaration made by the deceased Pratap Singh before complainant Karam Singh and Maha Singh. We, further do not find ourselves convinced with the argument advanced by the learned counsel for the State as the dying declaration allegedly made by the deceased appears to be nothing but a pure concoction.

A look at the postmortem report (Ext. A-1) of deceased would show that the temporal bone of the left side was found fracture and the bone of the skull was also fractured. Dr. V.C. Tripathi (P.W.1) who conducted the autopsy, has clearly deposed that there was greater possibility that after receiving the head injuries, the victim would be unconscious and would have remained so, till his death. Further, in view of the statement of Smt. Saraswati (P.W.5), it becomes quite clear that Pratap Singh was unconscious when she saw him in the room of Anand Ballabh Pande. The statement of Karam Singh

(P.W.7) and Maha Singh (P.W.8) to this effect that when Karam Singh called Pratap Singh by name aloud he had spoken with a deep breath that Dinesh Chandra Oli and Anand Ballabh Pande assaulted him with Lathi and Stones, appears to be a false embroidery coined against the appellant. We therefore, reject the alleged dying declaration of the deceased and inclined to believer that the deceased never regain consciousness after sustaining injuries on his person.

Apart of the dying declaration of the deceased, the prosecution has tried to establish the case on the basis of sole testimony of Trilok Singh (P.W.4), which we have also dismissed that keeping in view of his conduct, the testimony does not inspire confidence. We have already observed much about the conduct of Trilok Singh (P.W.4). The Hon'ble Supreme Court in the decision reported in AIR 1996 (SC) page 3471 Ali Mullah and others vs. State of West Bengal has clearly observed that in case when the witness kept silence for a long time and did not tell anyone about the occurrence to even his close relatives and has not offered any satisfactory explanation of his silence then, under these circumstances, the testimony of this type of witness is liable to be discredited and conviction on the basis of this type of evidence cannot be sustained.

The aforesaid decision of the Hon'ble Apex Court clearly applies to the facts and circumstances of the present case as in the instant case the sole testimony of Trilok Singh cannot be treated to be reliable.

The prosecution case further suffers with infirmity on the basis of non production of material witness before the Trial Court.

It is the case of the prosecution that Ratibhan and Pooran Chandra Joshi were also standing at the place of the occurrence and they had also witnessed the actual incident. We don not find

any reason to withhold these material witnesses under in this circumstances the adverse inference with regard to the prosecution cannot be ruled out.

One of the another important factor in the present case is that the evidence of Trilok Singh (P.W.4) reveals that it was the appellant Dinesh Chandra Oli who struck with bedpost at the head of the deceased Pratap Singh and the blood oozed out from the wound. The prosecution has not cared to produce the said bedpost before the court. Therefore, it is not possible to connect the appellant with actual commission of the offence. It is also important to mention here that the bedpost, when recovered by the police, was not found bloodstained. Therefore, under these circumstances, it cannot be said that whether the bedpost which was found from the place of the occurrence was actually used in the commission of crime.

For the reasons stated above, we are of the view that the prosecution has filed to establish the guilt of the accused/appellant u/s 302/34 I.P.C.

We don not any corroboration of the sole testimony of Trilok Singh (P.W.4) to connect the appellant with the crime. In our considered view as well as on the basis of the credible analysis of the evidence, we are of the opinion that the case against the appellant has not been proved beyond reasonable doubt.

Consequently, the appeal succeeds and is allowed. The conviction and sentence of the appellant imposed by the Trial Court by way of the judgment impugned,is hereby set-aside.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

August 24, 2004:
NCM: